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Attorneys for Plaintiff / Counterclaim Defendant Michael Aram, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL ARAM, INC. :

Plaintiff / Counterclaim Defendant : **ANSWER TO
COUNTERCLAIM**

-against- :

ANTHROPOLOGIE, INC. : Civ. Action No. 08-CV-4378
(KPC)

Defendant / Counterclaim Plaintiff :

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Plaintiff and Counterclaim Defendant Michael Aram, Inc. ("Aram"), by its undersigned attorneys, Pelosi Wolf Effron & Spates LLP, hereby answers the counterclaim filed on August 1, 2008 (the "Counterclaim") by Defendant and Counterclaim Plaintiff Anthropologie, Inc. ("Anthropologie") in connection with Civil Action No. 08-CV-4378 (the "Complaint"), as follows:

1. Admits that Anthropologie purports the Counterclaim arises under the statutes cited in Paragraph 1 of the Counterclaim. Admits that Anthropologie purports to base the Court's jurisdiction over this matter upon the statutes cited in Paragraph 1 of the Counterclaim.
2. Admits that Anthropologie purports that venue is proper based upon the statutes cited in Paragraph 2 of the Counterclaim.

The Parties

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Counterclaim, and therefore denies the same.

4. Admits.

Cause of Action

5. Denies the allegations set forth in Paragraph 5 of the Counterclaim.

6. Admits.

7. Denies the allegations set forth in Paragraph 7 of the Counterclaim.

8. Denies the allegations set forth in Paragraph 8 of the Counterclaim.

9. Denies the allegations set forth in Paragraph 9 of the Counterclaim.

Demand for Relief

10. Defendant denies each and every provision of the “WHEREFORE” clause and denies all other allegations not admitted above.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. Anthropologie’s Counterclaim is barred for failure to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. Aram’s counterclaim is barred under the doctrine of primary jurisdiction since the Register of Copyrights has exclusive and comprehensive authority to cancel copyright registrations, not this Court, which lacks such jurisdiction.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. “Aram Twigware” constitutes copyrightable subject matter and has satisfied legal and other formal requirements for obtaining copyright registration with the Register of Copyrights, resulting in Copyright Registration No. VA-1-201-641.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. Anthropologie is not entitled to recover against Aram because Copyright Registration No. VA-1-201-641 is prima facie evidence providing a presumption of validity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. Anthropologie never obtained a U.S. copyright registration for “Anthropologie Twigware,” as defined in the Complaint, since Anthropologie had knowledge that “Anthropologie Twigware” violated copyrights in and to “Aram Twigware.”

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Anthropologie’s Counterclaim is barred because Anthropologie has waived the claim set forth in the Counterclaim.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

7. Anthropologie’s Counterclaim is barred by the doctrine of laches.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

8. Anthropologie is barred from obtaining any relief, whether legal, equitable or otherwise on their Counterclaim because Anthropologie has acted in bad faith and has unclean hands.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

9. Anthropologie’s Counterclaim is barred because Aram at all times acted in good faith, in that his conduct constituted lawful, proper, and justified means to further his sole purpose of engaging in legal business activities.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

10. Anthropologie's Counterclaim is barred because Anthropologie brought the Counterclaim in bad faith for an improper purpose.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

11. Anthropologie's Counterclaim is barred because of Anthropologie's fraudulent conduct in connection with the subject matter of the Complaint.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

12. Anthropologie's Counterclaim is barred as a result of Anthropologie's failure to conduct reasonable and adequate due diligence to protect their own interests and obligations.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

13. Anthropologie's Counterclaim is barred because any recovery by Anthropologie in this action would result in unjust enrichment.

AS AND FOR A FOURTEEN AFFIRMATIVE DEFENSE

14. Anthropologie's Counterclaim is barred to the extent that Anthropologie has violated one or more laws in connection with the matters alleged in the Complaint.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

15. Anthropologie was not legally privileged to commit the acts alleged in the Complaint.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

16. Aram hereby gives notice that it intends to rely upon any additional affirmative defenses which become available or apparent during discovery and thus reserves the right to amend its Answer to Counterclaim to assert such additional defenses.

WHEREFORE, the Counterclaim should be dismissed in its entirety.

Respectfully submitted,

PELOSI WOLF EFFRON & SPATES LLP

Dated: August 19, 2008

By: 

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Attorneys for Plaintiff & Counterclaim
Defendant Michael Aram, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the Answer to Counterclaim to be served via ECF upon the following counsel for Anthropologie, Inc. on this 19th day of August, 2008:

Gregory P. Gulia
Vanessa Hew
1540 Broadway
New York, NY 10036

Dated: New York, New York
August 19, 2008

By: 
Angelo DiStefano, Esq.